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November 16, 2015

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response of Portman for Senate Committee in MUR 6888

Dear Mr. Jordan,

This response to the Complaint designated Matter Under Review 6888 is submitted on behalf of Senator Rob Portman, Portman for Senate Committee, and Natalie K. Baur, in her capacity as Treasurer of Portman for Senate Committee, by the undersigned counsel. It is our understanding that American Democracy Legal Fund filed the initial complaint in this matter on or about October 15, 2014, and then filed a supplemental complaint naming additional respondents on or about October 28, 2014. Portman for Senate Committee was not identified as a respondent in either the initial or supplement complaint. American Democracy Legal Fund then filed a Second Supplemental Complaint, of which Portman for Senate Committee received notice from the Commission on September 14, 2015, followed by a revised notice on October 1, 2015. Portman for Senate Committee did not receive copies of either the initial complaint or the (first) supplemental complaint from the Commission, although both are publicly available on American Democracy Legal Fund's website.

The Portman for Senate Committee (the "Committee") is not mentioned in the main body of the Second Supplemental Complaint. The Committee appears as a single entry in Complainant's Exhibit III which references a reported disbursement. The Complaint does not explain with any specificity *how* the Committee's activities are allegedly improper, or *how* or *from whom* the Committee has received any improper in-kind contribution in the form of a coordinated communication. The Complainants appear to have included the Committee as a named respondent on the sole basis of a disbursement made by the Committee to i360 LLC in May 2015 for "data." No additional details about the Committee appear anywhere in any of the three complaints.

In early 2015, the Committee entered into a commercial agreement with i360 for access to data and data services. As reported to the FEC, the Committee made a

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disbursement of \$8,671.68 to i360 on May 18, 2015 for these services. The Complaint, however, does not provide any evidence regarding what "data" the Committee purchased, or for what purposes the Committee used this "data." The Complaint does not identify even one independent expenditure, electioneering communication, or other expenditure or disbursement that allegedly constitutes a communication that was somehow coordinated with the Committee. Complainant's identification of a transaction between Committee and a data vendor, in the form of reciting an entry from a public report filed with the Commission, with nothing more, does not set forth facts that could constitute a violation of the Act.

The Complaint generally alleges that all of the named party committees, campaign committees, vendors, and independent organizations are in the process of illegally coordinating communications.¹ The Complainant does not bother, however, to establish any violation of 11 C.F.R. § 109.21 involving the Committee, which would require the Complainant to identify a public communication (i) that is paid for by a person other than the campaign committee, (ii) satisfies a content standard, and (iii) satisfies a conduct standard. 11 C.F.R. § 109.21(a). The Complaint fails to demonstrate any possible violation of the Act involving the Committee because the Complaint does not provide evidence that these three elements are satisfied. The Complaint does not identify any communication paid for by any person that in any way mentions Senator Portman. With no public communication identified, there can be no consideration of the content standards. Without a qualifying payor, and without a qualifying public communication, the Complaint's allegations regarding alleged "common vendors" and "conduct" are irrelevant. Similarly, the Complaint does not identify any in-kind contribution that has allegedly been received by the Committee as a result of coordination. With respect to the Committee, the Complaint makes only a conclusory legal assertion that the Committee is somehow involved in the impermissible coordination scheme that the Complainant has concocted.

The Complaint against Senator Portman, Portman for Senate Committee, and the Committee's Treasurer should be dismissed for failure to satisfy the Commission's threshold "reason to believe" standard. As previously explained, "[t]he Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. . . . Unwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true." MUR 4960 (Clinton), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2 (emphasis added); MUR 5467 (Moore), First General Counsel's Report at 5 (quoting MUR 4960).

¹ Second Supplemental Complaint at 4 ("In other words, any Republican on the ballot in 2016 who enters into a data agreement with either the Data Trust or i360 is poised to receive the benefit of tens or perhaps hundreds of millions of dollars of coordinated, in-kind spending from AFP, Freedom Partners, and others.").

“The RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges.” MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6, n.12. “[O]pening an investigation to determine whether we could discover a basis for those suspicions runs counter to the statutory constraints imposed on the Commission.” MUR 6296 (Buck), Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 4.

The Complainant’s allegations, which it has repeatedly supplemented, are a part of its ongoing efforts to harass Republican campaigns, committees, and conservative organizations on a rolling basis. The Complaint against Senator Rob Portman, Portman for Senate Committee, and Natalie K. Baur, in her capacity as Treasurer of Portman for Senate Committee, should be dismissed as expeditiously as possible.

Sincerely,



Thomas J. Josefiak

Michael Bayes

Counsel to Portman for Senate Committee